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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/383,669 08/26/99 HALL

A 98-2006

PM82/0714

EXAMINER

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SUITE 250  
SIOUX FALLS SD 57105-5807

ENGLE, P

ART UNIT

PAPER NUMBER

3612

2

DATE MAILED:

07/14/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/383,669	HALL ET AL.
	Examiner Patricia L Engle	Art Unit 3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_\_.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-8 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-8 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 26 August 1999 is/are objected to by the Examiner.

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some \* c) None of the CERTIFIED copies of the priority documents have been:

1. received.

2. received in Application No. (Series Code / Serial Number) \_\_\_\_\_.

3. received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

#### Attachment(s)

15) Notice of References Cited (PTO-892)

16) Notice of Draftsperson's Patent Drawing Review (PTO-948)

17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_

18) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_

19) Notice of Informal Patent Application (PTO-152)

20) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 15A. Correction is required.

3. The drawings are objected to because the alpha-numeric reference characters are different in the specification and drawings. For example bottom side of the second wall member (16) is 16A in the specification and 16a in the drawings. Please change either the specification to correspond with the drawings or the drawings to correspond with the specification. Correction is required.

### ***Specification***

4. The disclosure is objected to because of the following informalities: The differences of the two embodiments were not disclosed in the specification.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 8 recite "a flap member securely attached thereto" in line 2. Is thereto the first wall member or the bottom side of the first wall member.

Claims 1 and 8 recite "from a first longitudinal edge of said first wall member which is hingedly attached to a first side wall of a pickup truck box". Does that mean that the flap is hingedly attached to the first side wall? Or is the first longitudinal side attached to the first side wall? Or is the first wall member attached to the first side wall at another location? If the flap or first longitudinal edge are attached to the first side wall, then the drawings need show this limitation.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3 as understood are rejected under 35 U.S.C. 102(b) as being anticipated by Reardon et al. (US Patent 3,069,199).

Reardon et al. disclose a truck box cover and side wall extension attachment comprising: a first wall member (26) having a bottom side, a flap member (35) securely attached thereto (column 2, lines 42-43) and extending along and outwardly from a first longitudinal edge (30) of said first wall member (26) which is hingedly attached (40) to a first side wall of a pickup truck box; a second wall member (27) having a bottom side and being hingedly attached (40) to a second side wall of a pickup truck box; a means for bracing said first and second wall members in upright positions (57) upon respective side walls of a pickup truck box; and a means for lockably latching said first and second wall members (see Figures 6-9) together in a closed position; wherein said flap member (35) is thin and flat and having a width capable of extending partially beneath a first longitudinal edge of the second wall member when both said first and second wall members are in a closed position (see Figure 8); and wherein said first and second wall members partially overlap a front wall and a tailgate of a truck box when said wall members are in a closed position (see Figures 1 and 2).

#### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102((e), f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 1-3 as understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Beals (US Patent 4,531,775) in view of Reardon et al. (US Patent 3,069,199).

Beals discloses a truck box cover and side wall extension comprising: a first wall member (15) having a bottom side which is hingedly attached (31) to a first side wall (3) of a pickup truck box; a second wall member (17) having a bottom side and being hingedly attached (31) to a second side wall (3) of a pickup truck box; a means for bracing said first and second wall members in upright positions (49) upon respective side walls of a pickup truck box; and a means for lockably latching said first and second wall members (69) together in a closed position; wherein the first and second wall members partially overlap a front wall (5) and a tailgate (7) of a truck box when in the closed position (column 3, lines 25-28).

Beals does not disclose a flap extending from a first longitudinal edge on the first wall capable of extending underneath a first longitudinal edge of the second wall member. Beals does disclose that the longitudinal edges of the first and second wall can be beveled in an overlapping configuration to assist in the locking of the panels (column 4, lines 33-37).

Reardon et al. disclose a truck box cover and side wall extension with a first wall member (15) having a flap (35) extending from the first longitudinal edge capable of extending beneath the first longitudinal edge of the second wall member (17).

Beals and Reardon et al. are analogous art because they are from the same field of endeavor, i.e., truck box cover and side wall extension members.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to include a flap on the first wall member to overlap the second wall member as taught by Reardon et al. as it would merely involve the alternate utilization of an equivalent overlapping means to achieve the same exact function.

Therefore, it would have been obvious to combine Reardon et al. with Beals to obtain the invention as specified in claims 1-3.

12. Claims 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beals as modified by Reardon et al. as applied to claims 1-3 above, and further in view of Jordan (US Patent 5,183,309).

Beals as modified disclose a truck box cover and side wall extension member with the limitations of claim 3 and a bracing means including telescoping brace members (50) wherein one end of the telescoping brace member is attached to the side

wall member (15 or 17) and the other end of the brace member (50) is attached to the front wall member (5); wherein the telescoping brace member includes an fluid-filled cylinder and a piston movably extended in the cylinder (column 3, lines 62-64). A fluid is defined by Merriam-Webster's 10<sup>th</sup> Edition Dictionary as "a substance (as a liquid or gas) tending to flow or conform to the outline of its container." Therefore the fluid in the fluid-filled cylinder could be air.

Beals as modified does not disclose that the bracing means includes brackets attached to the first and second wall members and a front wall of the cargo box to attach the telescoping brace member to the wall members and the front wall of the cargo box.

Jordan teaches truck box cover member with a brace member (100) attached to the bottom side of the first wall member (64) by means of a bracket (102). Jordan also teaches attaching the other end of the brace member (100) by means of a bracket (104).

Beals and Jordan are analogous art because they are from the same field of endeavor, i.e., truck box cover members.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to include brackets for attaching the brace member to the side wall members and the front wall of the cargo box as taught by Jordan.

The motivation would have been to allow the correct operation of the support mechanism as taught by Jordan (column 5, lines 12-13).

Therefore, it would have been obvious to combine Reardon et al. with Beals as modified to obtain the invention as specified in claims 4-8.

***Double Patenting***

13. Applicant is advised that should claim 7 be found allowable, claim 8 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Dawson, Jr. teaches a truck box cover and side wall extension member with bracing means that can be either a hydraulic or pneumatic cylinder and piston.

Barry et al. disclose a truck box cover with bracing means including a pair of telescoping braces.

The other references disclose cargo box cover and side wall extension members.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L Engle whose telephone number is (703) 306-

5777. The examiner can normally be reached on Monday - Thursday 8:00-5:30 and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, D. Glenn Dayoan can be reached on (703) 308-3102. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Patricia L Engle  
Examiner  
Art Unit 3612

ple  
July 10, 2000

D. GLENN DAYOAN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600